

IN THE COURT OF THE II ADDITIONAL DISTRICT JUDGE AT SALEM
 PRESENT: Thiru. A. M. Ravi, B.A., B.L.,
 II Additional District Judge, Salem.

Friday, the 23rd day of December 2022

R.E.P.No.119/2020
in
A.O.P.2/2018

M/S. Shriram City Union Finance Ltd.,
 Rep. By its Power of Attorney Senthil,
 Salem.

... Petitioner/ Decree Holder

/Vs/

1. Duraisamy

2. Usha

3. Vaiyapuri

4. Madheswari

. . . Respondents/ Judgment Debtor

This petition came up before me on 21.12.2022 for final hearing in the presence of Thiru. S. Mubarak Ali, Advocate for Petitioner and of Thiru. G. Dhandapani Advocate for the 4th Respondent. On hearing both side arguments, and upon perusing the entire records and matter having stood over for considering till this day, this Court delivered the following :

ORDER

The Petitioner / Decree Holder filed an Execution Petition under Order XXI Rule 11 of C.P.C. to attach and sell the petition mentioned immovable properties of the 4th Respondent for the purpose of realization of the award

amount with interest and cost and award passed in A.OP .No. 2/2018 dated 30.04.2018.

2. The Summary of the averments in the petition filed by the Petitioner / Decree holder is as follows:-

The Petitioner / Decree holder obtained the award in O.S. No.2/2018 on 30.04.2018 before the Sole Arbitrator. Now there is no appeal against the said award. After the award passed by the Sole Arbitrator the Respondents / Judgment Debtors not come forward to pay the award amount with interest. Hence, the Petitioner / Decree holder filed this petition to attach and sell the petition mentioned property of the 4th Respondent / Judgment Debtor for the purpose of realization of the award amount with interest.

3. The Summary of the averments in the counter statements filed by the 4th Respondent(EP against the 4th Respondent alone) is as follows :-

The Petitioner / Decree holder has obtained a decree with false and untenable allegations. The Respondents No.1 to 3 are the borrowers. The 4th Respondent has not borrowed any loan amount from the Petitioner. The 4th Respondent is only owner of the petition mentioned property. The Petitioner is entitled to recover the loan amount from the Respondents 1 to 3, but not this 4th Respondent. There is no necessity to issue show cause

notice to the 4th Respondent and order to attach the petition mentioned property and there is no necessity to Court public auction. If any amount recover by the Petitioners, the Respondents 1 to 3 are liable to pay the loan amount. The amount mentioned in the petition in Columns 7 & 8 are not maintainable and calculation of interest mentioned in the petition are incorrect. Therefore the Respondent prayed for dismiss the petition.

5. Both side no oral and documentary evidence produced.

6. Both sides arguments heard.

7. The Point for consideration in this petition is that Whether this petition is deserved to be allowed or not?

POINT :-

8. The Petitioner / Decree holder filed this Execution application to attach and sell the petition mentioned immovable properties of the 4th Respondent / Judgment Debtor for the purpose of the realization of the award amount with interest and cost and award passed in A.OP 2/2018 dated 30.04.2018. Since the Respondents / Judgment Debtors are not come forward to pay the award amount with interest and with cost as on date.

9. The 4th Respondent objection in the counter is that she has not borrowed any loan amount from the Petitioner and the Petitioner is only entitled to recovery the loan amount from the 1 to 3 Respondents, but not

this 4th Respondent and the interest calculation mentioned in the petition's para 7 & 8 are totally false. Considering the objection raised by the 4th Respondent, the arbitration award passed against the Respondents 1 to 4. Thereby the Respondents / Judgment Debtors are jointly and severally liable to pay the award amount with interest and with cost.

10. Further more another objection is that the interest calculation mentioned petition's para 7 & 8 are not correct. Considering this aspect what are the correct calculation and how the Petitioner wrongly calculated the interest are not specifically stated by the 4th Respondent / Judgment Debtor. Hence this Court comes to the conclusion is that the objection raised by the Respondent / JD is only formal and to enjoy the fruits of the award, since the Respondents / Judgment Debtors are not come forward to pay the award amount with cost as on date. Hence in the interest of justice this petition is allowed. Batta in 3 days. Attach by 02.02.2023.

IN THE RESULT:-

This petition is allowed. Batta in 3 days. Attach by 02.02.2023.

This order directly dictated to Steno-typist, typed by her, corrected and pronounced by me in the open Court, the 23rd day of December 2022.

sd/-A. M.Ravi
II Additional District Judge,
Salem.

APPENDIX :

List of Petitioner side witnesses : NIL

List of Petitioner side Documents : NIL

List of Respondent side witnesses : NIL

List of Respondent side Documents : NIL

**sd/-A. M.Ravi
II Additional District Judge,
Salem.**